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May 16, 2008

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## MEMO ENDORSEMENT

### Via Facsimile

The Honorable Robert P. Patterson, Jr.  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1920  
New York, New York 10007-1312

Re: *Merrill Lynch & Co., Inc. v. "John Doe,"* Case No. 07 CV 9649 (Patterson, J.)

Dear Judge Patterson:

We are counsel for plaintiff Merrill Lynch & Co., Inc. ("Merrill") in the above referenced action. We are writing to request an additional period of 45 days for Merrill to serve its complaint in this matter.

Pursuant to Your Honor's order of February 22, 2008, Merrill's time to serve the complaint was extended from February 27, 2008 until May 27, 2008. Since that time Merrill has continued to diligently seek to uncover the identity of the individual who impersonated a Merrill employee and sent racially denigrating e-mails to African-American employees of Merrill. As we explained at a conference before Your Honor on February 22, 2008, Merrill has pursued a variety of leads to determine the identity of this individual so that the complaint can be served. These have included the service of subpoenas on Internet Service Providers that were used to distribute the e-mail content, a health club facility from where the e-mails were sent and Microsoft, which owns and operates the Hotmail e-mail service that was used to generate the racially motivated emails. Unfortunately, to date, the identity of the individual behind the e-mails is still unknown.

Currently, there is a motion pending in the United States District Court for the Western District of Washington to compel Microsoft to disclose the e-mail content that is contained in the Hotmail account used for the racially charged e-mails. While Microsoft disclosed the underlying Hotmail account information, it declined to disclose the e-mail content contained in the account, absent a court order. As a result, Merrill has filed a motion to compel the disclosure of the e-mail content contained in the Microsoft Hotmail account at issue. That motion is currently *sub judice*, and we expect a ruling shortly. It is hoped that if the motion is granted there will be information



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in the e-mail content that will help to identify the individual in question. In addition, there is currently pending a review of the names of employees at the health club in question. That review has been scheduled to take place shortly, and it is hoped that this may also help in identifying the individual behind the e-mail campaign.

Based on the foregoing, we respectfully request that Your Honor grant Merrill an additional 45 days, until July 11, 2008, to serve its complaint in this action.

Respectfully,

A handwritten signature in cursive script, appearing to read 'Georges Nahichevansky'.

Georges Nahichevansky

*Application granted  
So ordered  
Robert P. Patterson  
Jr.  
5/16/08*